IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.02.2007

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.P.Nos.953 to 955 of 2006
& W.P.M.P.No.1098 to 1100 of 2006

N.Viswanathan ... Petitioner in W.P.No.953/2006
P.Krishnan ... Petitioner in W.P.No.954/2006
N.H.Subramanian ... Petitioner in W.P.No.955/2006

Vs.

1. Union of India
Rep.by its Secretary to Government,
Ministry of Textiles, Udyog Bhawan
New Delhi.

2. The Cotton Textile Export Promotion Council,
Rep.by Deputy Director (Administration)
Registered Office at Engineering Center,
5th floor 9 Mathew Road, Opera House,
Mumbai 400 004. ... Respondents in the W.Ps.

PRAYER IN ALL THE W.Ps.: These writ petitions are filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records from the 2nd respondent in connected with the impugned termination order No.G/075, G/076 and G/074 respectively, dated 01.03.2005 and quash the same and consequently direct the respondents to either reinstate the petitioner with all attendant service benefits like continuity of service, etc., or extend the benefits under the Voluntary Retirement Scheme to the petitioners.

For Petitioners : Mr.Venkatachalapaty, SC for
Mr.M.Sriram
For Respondents : Mr.S.R.Rajagopal for R2
Mr.Patty B.Jaganathan for R1

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O R D E R

In the Writ petition in W.P.No.953 of 2006 the second respondent is a company registered under the Companies Act, with the object of promoting, supporting and protecting, maintaining and increasing the export of cloth and yarn. The petitioner, who was working as Lower Division Clerk/Data

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Entry Operator under the second respondent from 19.10.1990, was promoted as Upper Division Clerk on 26.06.2000. On the basis of the agreement entered by the Government of India with the World Trade Organisation, since direct export trade has been restricted, the petitioner's services were terminated by the second respondent on 01.03.2005 on the basis that the second respondent is desirous of closing the Madras unit. The second respondent has earlier introduced a Voluntary Retirement Scheme and at that time the petitioner has not opted for the same. According to the petitioner, the appointment is on all India basis and the vacancies are available in other places, therefore, the termination is back.

2. It is also admitted case that the petitioner has accepted the terminal benefits given by the second respondent, however, he was forced to do so, according to the petitioner. In view of the same, when the second respondent has introduced Voluntary Retirement Scheme, the employees of Madras unit have made joint representation, there was no reply.

3. Likewise, the petitioner in W.P.No.954 of 2006 was appointed as Peon in the Coimbatore Office of the second respondent on 08.06.1970 and transferred to Chennai during 1983 and was promoted as Lower Division Clerk during 1996. He was also terminated from service on 01.03.2005.

4. In W.P.No.955 of 2006, the petitioner was working as Lower Division Clerk / Typist in Chennai office of the the second respondent from 01.09.1988 and promoted as Stenographer/UDC from November 1992 and he was also terminated on 01.03.2005. It is also admitted that out of 7 persons working in the second respondent company, the above 3 persons have filed the writ petitions.

5. It is also admitted that the all the 7 employees were terminated on the basis that the business in the second respondent is closed and the closure compensation also settled, as it is seen in the order of the second respondent dated 24.02.2005. By a representation, dated 17.03.2005 in fact the petitioners have requested the Executive Director of the second respondent at Mumbai to pay a better compensation as that of the staff in Mumbai and Delhi office. That apart, they have also been demanding about the payment of closure compensation and the same has in fact been paid. Even in June and July 2005 by a representation dated 26.11.2005, the petitioners and the employees at Madras unit of the second respondent have been claiming the settlement of compensation. The case of the petitioners is that after the petitioners were terminated on 31.03.2005, the Voluntary Retirement Scheme was implemented in November 2005, which is only with an ulterior motive.

6. The second respondent has filed counter affidavit in all these cases. The very maintainability of the writ petitions are in question, on the basis that the second respondent is only a company registered under

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Section 26 of the Indian Companies Act, and therefore, it is not a "state" within the meaning of Article 12 of the Constitution of India and therefore, the writ petitions are not maintainable. It is the further case of the second respondent that the petitioners have alternative efficacious remedy available under the Industrial Disputes Act. Therefore, according to the second respondent the writ petitions are not maintainable.

7. It is also the case of the second respondent that the Voluntary Retirement Scheme was introduced in 2003, the petitioners have not opted for the same. The writ petitions are filed belatedly only to extract more money from the second respondent. The second respondent also would submit that the second respondent has complied with the provisions of the Industrial Disputes Act, and paid the entire compensation due to the petitioners and the petitioners have also accepted the same. In view of the same, the writ petitions are liable to be dismissed.

8. I have heard the learned Senior counsel for the petitioners and also learned counsel appearing for the second respondent.

9. The fact that the second respondent is a company registered under the Companies Act, is not in dispute. It is not even the case of the petitioners that the Government has got any control over the second respondent, inasmuch as the second respondent is a private company. In view of the above said admitted position that the second respondent is not a "state", there is absolutely no difficulty to come to the conclusion that the writ petitions are not maintainable under Article 226 of the Constitution of India, inasmuch as the Hon'ble Apex court has laid down the dictum to find out as to whether there was an effective control of the Government or there is any public element involved, holding that there should be an effective administrative, functional and financial control of the Government for the purpose of making an organisation as a "State", as laid down in Pradeep Kumar Biswas and others Vs. Indian Institute of Chemical Biology and others reported in 2002(2) CTC 474. On the facts and circumstances of the case, there is absolutely no difficulty to come to the conclusion that the writ petitions are not maintainable.

10. That apart, as rightly pointed out by the learned counsel for the second respondent that it is not as if the petitioners are not having any remedy available. A reference to the entire communication show that they have been asking for better compensation. If that be so certainly the remedy available to the employees is under the Industrial Disputes Act. When an effective and alternative remedy is available, the writ jurisdiction cannot be invoked, which has been an established law as it has been approved in the latest judgement of the Hon'ble Apex Court in A.P.Foods Vs. S.Samuel and others reported 2006(5) SCC 469, holding

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"6. In a catena of decisions it has been held that a writ petition under Article 226 of the Constitution of India should not be entertained when the statutory remedy is available under the Act, unless exceptional circumstances are made out."

11. On the facts and circumstances of the case, as I have stated earlier, there is an effective alternative remedy available under the labour legislation, as it is stated by the second respondent in the counter affidavit. Hence, the writ petitions fail and the same are dismissed. However, with a liberty to the petitioners to approach appropriate forum. No Costs. Consequently, the connected M.Ps. are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

nbj

To

1. The Secretary to Government,
   Union of India
   Ministry of Textiles, Udyog Bhawan
   New Delhi.

2. The Deputy Director (Administration)
   The Cotton Textile Export Promotion Council,
   Registered Office at Engineering Center,
   5th floor 9 Mathew Road, Opera House,
   Mumbai 400 004.

3 cc To Mr.S.R.Rajagopal, Advocate, SR.9256 to 9258.

W.P.Nos.953 to 955 of 2006
& W.P.M.P.No.1098 to 1100 of 2006

KA(CO)
RVL 21.02.2007

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